Supreme Court, U. S.
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IN THE

Supreme Court of the United States

March Term, 1979

No. 78-1627

LARRY P. CRAMER,

Petitioner.

vs.

THE STATE OF ILLINOIS,

Respondent.

REPLY BRIEF TO STATE'S RESPONSE TO PETITION FOR WRIT OF CERTIORARI

Larry P. Cramer, Pro Se,
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Sidell, Illinois 61876,
Petitioner.

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REASONS FOR GRANTING THE WRIT

1. Whether the petitioner was denied trial by jury and due process of law by the intervention of the trial court at his own initiative in the jury's deliberations to re-present the State's evidence.

Tape recordings in this case were virtually an "instant replay" of the alleged crime, and far more critical than the re-reading of other testimonial evidence would have been. Yet, the State likens them to mere "exhibits" such as a gun or bed-stained clothing. Tape recordings are not in this category of exhibits once they are played, when they become testimonial in nature.

The State's contention that the jury may have concluded that the tapes were not evidence

contained only a surface logic which is speculative at best, immaterial to the point made here in any event, and certainly disspelled by the later conduct of the trial court.

The trial court has no authority to initiate the procedure for re-hearing evidence and singling out what that evidence should be. For all we know, the jury may have wanted to read only such of the transcripts as were necessary to clear up a dispute over a single fact. But the trial court belatedly foisted the entire tape situation upon the jury in an "all or nothing" choice.

Even though the Sppellate Court agreed that this procedure was error, and then by a two to one vote concluded without discussion that there was some overwhelming unspecified proof of guilt, the clear fact remains that the jury never concluded guilt before this exploitation of the tapes.

In effect, the trial court requested a guilty verdict, and the jury complied.

2. Whether the petitioner was denied due process of law by being convicted on a general verdict when some of the counts which could have been the basis for conviction were dismissed after trial.

The State's Response seems not to understand that the dismissed counts could have been the sole basis for conviction.

If the jury felt that only an overt act specified in one of the dismissed counts had been proved, they would still have been compelled under the court's instructions to return a guilty verdict.

If separate verdict forms had been used, and the petitioner acquitted of the surviving counts and convicted of the later-dismissed counts, the verdict obviously could not stand. Since this cannot be determined, this is the exact situation where the Stromberg line of cases applies.

Just because the State introduced some testimony to support each of the four overt acts alleged is no showing that the jury believed all of them to have been proved beyond a reasonable doubt.

Even if the State's new theory that this was just one continuing conspiracy is adopted, the finding of the commission of just any overt act is not all that is required to support a verdict.

Under Illinois law there can be no conspiracy nor an overt act after one of two conspirators becomes a police operative. This was the basis for dismissal of the two counts in this case. This is also logical; otherwise, an informer-conspirator could commit a series of overt acts at police direction which would be chargable to the co-conspirator. The record must show a finding of guilt as to an over act which has been charged (see the next section) and which has not been eventually dismissed.

3. Whether the petitioner was denied trial by jury and due process of law where the jury was never instructed nor informed as to what overt acts in conspiracy were alleged or required to be proved.

The State concedes that the instructions never informed the jury what overt acts were charged and required to be proved, but advances the new argument that the indictment which specified the overt acts was read to the jury. Then the State says, "For petitioner to argue that the jury did not know what 'overt acts were charged' is patently false."

Before the State accuses this petitioner of making a "patently false" argument before this court, they should find in the record a reference to the indictment having been read to the jury or by the jury. It is not in the record. It was

not done. It is not even the practice in Champaign County, Illinois, to read the indictment to the jury or let them read it.

The "patently false" characterization lies with the State's reckless disregard of the record, not with this petitioner's argument.

The cases cited by the State have no bearing whatsoever on this issue, and this point stands without contradiction in the record: the jury was never in any manner apprised of what four overt acts were charged here.

CONCLUSION

For the foregoing reasons, it is again prayed that the Petition for Writ of Certiorari be granted.

Respectfully submitted,

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